IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE.

WRIT PETITION NO. 6693 OF 2006.

Sahakar Night High School. .. Petitioner.
V/s.
Shantaram A. Kunte & ors ... Respondents.

Shri G.K. Salunke for the petitioner.

Shri Sunil Dighe for respondent No.1

Shri Kishor Shetty for respondent No.2.

CORAM : R.M.S. KHANDEPARKAR,J.

DATED : 12.10.2006.

P.C. :

. Heard.

. Rule. By consent rule is made returnable forthwith.

2. Petitioner challenges the judgment and order dated 21st July 2006 passsed by the School Tribunal in Appeal No.MUM/82/2002. Though the impugned judgment is said to be challenged on various grounds, suffice it to refer to only one ground which would justify interference in the impugned judgment and remand the matter.

3. Learned Counsel for the petitioner drawing attention to Rule 27(a) of the M.E.P.S. Rules, submits that in terms of the provisions of law comprised under the said Rule it was necessary for

the Tribunal to consider the points which were raised before the Tribunal regarding excess number of scheduled caste candidates having been appointed in the school, while dealing with issue regarding termination of services on the ground of fall in number of pupil. It is the contention on behalf of the petitioner that though specific point in regard to said point was raised by demonstrating how number of schedule caste candidates exceeds reserved percentage, the School Tribunal totally ignored the same and thereby failed to exercise jurisdiction in the manner which was required to be exercised while dealing with appeal.

4. Learned Counsel for the respondents though sought to contend that the impugned judgment, even on consideration of provisions of Rule 27(a) can be justified, fairly conceded that the School Tribunal has not discussed above aspect of the matter in the impugned judgment.

5. Undoubtedly Rule 27 (e) provides that when any retrenchment is to be effected, members of the Backward Classes already in service shall not be retrenched though liable to retrenchment according to their seniority, if their strength in the school does not exceed the percentage of reservation prescribed in sub-rule (7) of the Rule 9. In their place, an equal number of other non backward class

members of the staff shall be retrenched subject, however, to the condition that as, between the permanent and temporary employee, the temporary employee shall be retrenched irrespective of the fact that he belongs to the backward class.

6. Reply filed in the course of hearing before the Tribunal also disclosed that the respondent in the appeal had raised a specific point regarding excess number of schedule caste teachers in the school. Indeed, perusal of the judgment nowhere discloses consideration of this aspect while deciding the matter. Obviously, therefore, the impugned judgment cannot be sustained and is liable to be set aside as the said aspect is important having bearing on the final decision arrived at in the matter.

7. For the reasons stated above, therefore, while setting aside the impugned order, the matter needs to be remanded to the School Tribunal.

8. Hence, impugned order is hereby set aside and matter is remitted back to the School Tribunal, leaving all issues open for consideration and with further direction that the matter should be decided without in any manner, getting influenced by any of the findings arrived at in the earlier judgment and after hearing the parties, in accordance with the

provisions of law, within a period of 3 months from the date of receipt of writ from this Court.

9. Rule is made absolutely accordingly.

(R.M.S.KHANDEPARKAR,J.)